

IT2018 EJT – SPECIAL TERMS AND CONDITIONS FOR DELIVERIES OF DATA SYSTEMS AND CUSTOMISED SOFTWARE

1 SCOPE OF APPLICATION

- 1.1 These special terms and conditions shall apply to the delivery of data systems and customised software.
- 1.2 In addition to these special terms and conditions, the IT2018 YSE general terms and conditions shall apply. In case of discrepancy between these special terms and conditions and the IT2018 YSE general terms and conditions, these special terms and conditions shall take precedence.
- 1.3 These special terms shall not apply to equipment deliveries or maintenance, support or further development of data systems, and the provision of such services shall be agreed on separately in writing, if necessary.

2 DEFINITIONS

- 2.1 **Customised software** means software or software component defined as customised software in the agreement and the instructions or other documentation and potential media related to the customised software in question.
- 2.2 **Data system** means (a) a functional entity comprising standard software, customised software, open source software, software code deliverables created as a result of supplier's work under the agreement and other software and software components included in the delivery and the instructions or other documentation and potential media related to the data system in question; or (b) customised software.
- 2.3 **Manufacturer** means the supplier or third party to whom the intellectual property rights in the data system belong.
- 2.4 **Open Source Software** means any software or software component which (a) is licensed subject to the open source licence terms and conditions listed at www.opensource.org/licenses; (b) fulfil the open source definition set out at www.opensource.org/docs/osd; or (c) is otherwise licensed subject to the licence terms and conditions conforming to the criteria set out at www.opensource.org/docs/osd.
- 2.5 **Operating** means performing the software's operational procedures.
- 2.6 **Specifications** mean written specifications approved by the parties and which specify the functional and technical features of the data system or part of the data system.
- 2.7 **Standard software** means software or software component marketed or licensed to several customers and the instructions or other documentation and potential media related to the standard software in question.
- 2.8 The software included in the data system contains an error if it does not substantially operate as described in the specifications, or if it does not otherwise correspond to what the parties have agreed in writing.

3 GENERAL RESPONSIBILITIES OF THE SUPPLIER

- 3.1 The supplier undertakes to perform the tasks for which the supplier is responsible, in conformity with the agreement, with due care and with the professional skill required for the tasks.
- 3.2 The supplier is also responsible for ensuring that the data system corresponds to what the parties have agreed in writing.

4 GENERAL RESPONSIBILITIES OF THE CUSTOMER

- 4.1 The customer undertakes to perform in conformity with the agreement and with due care the tasks for which the customer is responsible.
- 4.2 The customer shall, in the agreed manner, provide the supplier with sufficient and correct information in order to perform the work included in the project. The customer shall be responsible for the information and instructions provided to the supplier and for ensuring that the data system is suitable for its intended use by the customer.

5 PROJECT ORGANISATION AND IMPLEMENTATION

- 5.1 The parties shall initiate a project and appoint a steering group to implement the agreement and to organise the cooperation between the parties. The steering group to which each party shall nominate its representatives shall supervise the implementation of the project as the cooperation organisation of the parties. The steering group's other duties shall be specified in the agreement. The steering group shall convene at the request of either party as required and at minimum after each delivery phase. Minutes of the meetings of the steering group shall be kept.
- 5.2 The supplier shall appoint a project manager who shall have the duty to report to the steering group regarding the status and progress of the project. The project manager's other duties shall be specified in the agreement.
- 5.3 Each party shall nominate a contact person responsible for monitoring and supervising the implementation of the agreement and providing information both within its own organisation and to the other party in respect of matters related to the implementation of the agreement. The supplier's contact person shall be the supplier's project manager. Each party shall inform the other party of a change of contact person in good time.
- 5.4 Each party shall assign the necessary personnel to the project and reserve sufficient working time for them for the performance of the tasks. The supplier shall not, unless the customer's consent is obtained, make changes to potential key persons named in the agreement. The supplier shall, however, be entitled to change a key person named in the agreement if such change occurs due to termination of that person's employment.
- 5.5 Each party shall reserve the necessary working space and tools necessary for the project.
- 5.6 Each party shall contribute to the implementation of the project with respect to factors under the command or control of the party. Each party undertakes to take such decisions as are necessary to implement the project without undue delay.
- 5.7 The data system shall be implemented and other works related to the project shall be performed using the supplier's working methods.

- 5.8** During the project, the responsibility for taking back-up copies of the data system and for verifying their functionality lies with the party responsible for the development environment according to the agreement. The responsibilities set out in section 8.4 of the IT2018 YSE general terms and conditions shall otherwise apply to backup.
- 5.9** All changes to the specifications and other changes to the data system and the possible effects of such changes on the time schedule, price and other terms and conditions of the agreement must be agreed in writing in order to be valid. Unless otherwise agreed in writing, the steering group referred to in section 5.1 shall have the right to make decisions on the changes provided each party's named steering group representatives approve them.

6 REPORTING

- 6.1** The supplier shall provide the customer with updated information on the progress of the project as agreed in writing. Unless otherwise agreed in writing, the supplier shall report on the progress of the project in writing at least once per month and in the final report. To the extent the data system or project has not been agreed to be performed for a fixed price, the supplier shall also provide information on working time used.
- 6.2** The customer shall without undue delay provide detailed observations on the supplier's written notice or intermediate report regarding the progress of the project.

7 DELIVERY AND INSTALLATION

- 7.1** After performing the tests specified in section 8.1, the supplier shall deliver the data system to the customer in accordance with the agreed time schedule and installed in the agreed operating environment for the acceptance test specified in section 8.
- 7.2** The supplier shall deliver to the customer the software included in the data system in machine-readable form together with such descriptions of open application programming interface possibly specified by the manufacturer. If the data system contains customised software which the customer has been granted rights to modify, the supplier shall also deliver to the customer the documented source code of such customised software together with possible descriptions of application programming interface. If the data system contains open source software which the customer has been granted rights to modify, the supplier shall also deliver to the customer the source code of such open source software.
- 7.3** The customer shall at its own expense prepare the operating environment of the data system in conformity with the agreement. The supplier shall provide the customer with the necessary specifications of the operating environment described in the agreement in writing and in good time before the delivery, if they have not been specified in the agreement. The supplier shall be entitled to inspect the operating environment at a time to be agreed by the parties prior to the agreed time of installation. The customer shall arrange access to the supplier to the installation premises at a time to be agreed by the parties for the performance of the installation. The customer shall at its own expense arrange the working and storage space necessary for the installation.
- 7.4** The instructions and other documentation included in the delivery shall be either in Finnish or in English.

- 7.5** The risk of loss or damage to the data system shall pass to the customer when the data system has been delivered into the possession of the customer.
- 7.6** The delivery shall include tasks related to the training of the customer's personnel, deployment of the products and conversion of data only to the extent agreed in writing.

8 TESTING AND ACCEPTANCE OF DELIVERY

- 8.1** Unless otherwise agreed in writing, the supplier shall test the data system in accordance with the supplier's practice and the supplier shall certify in writing that the data system is ready for the customer's acceptance test. If it has been agreed that specific test material prepared by the customer shall be used, the material shall be made available for inspection by the supplier in good time before the agreed time of the testing.
- 8.2** The customer shall perform the acceptance test for the data system in the operating environment specified in the agreement.
- 8.3** The customer shall perform the acceptance test for the data system within 30 days of the date of delivery of both the data system to the customer for the acceptance test and the report confirming that the data system has passed the tests made by the supplier. If the data system has an error which prevents the testing, the customer is entitled to suspend the testing by notifying the supplier thereof in writing. The time period reserved for the acceptance test shall be extended by a time period corresponding to the time during which the acceptance test cannot be made due to correction of the error which has prevented testing. The customer shall without undue delay inform the supplier in writing of all errors detected in the data system and shall identify such errors in sufficient detail.
- 8.4** Errors that do not substantially interfere with the use of the data system shall not prevent the acceptance of the data system. The supplier shall, however, correct such errors without undue delay in accordance with the warranty terms.
- 8.5** The data system shall be deemed to be accepted, (a) when the customer notifies the supplier of the acceptance of the data system in writing; (b) when the supplier has demonstrated that it has corrected all errors reported by the customer in writing which prevented earlier acceptance; (c) if the customer has not presented in accordance with section 8.3 a written complaint regarding an error which prevents acceptance; or (d) if the customer takes the data system into production use. The criteria mentioned above in this section 8.5 shall not be applied in the acceptance of partial delivery to the extent an error in a partial delivery could not have reasonably been noticed prior to the acceptance testing of a later delivered partial delivery.
- 8.6** The entire delivery shall be deemed to be accepted when both the data system and the delivery of the documentation included in the delivery have been delivered and all the other tasks included in the delivery have been performed in conformity with the agreement.
- 8.7** The parties may separately agree on the testing and acceptance of partial deliveries. To the extent the parties have not agreed otherwise in writing, sections 8.1 – 8.6 shall also apply to the testing and acceptance of partial deliveries.

9 DELAY OF DELIVERY

- 9.1** Either party shall be entitled to liquidated damages if acceptance of delivery in accordance with section 8.6 is delayed for a reason attributable to the other party. If the delay is caused by a force

majeure event, the delayed party shall be released from liability in accordance with IT2018 YSE general terms and conditions. A delay in the provision of information or documents preventing the delivery or use of part of the delivery shall be considered as delay of the part of the delivery in question. The customer shall, however, not be entitled to liquidated damages for any period of time during which the supplier provides the customer free of charge with substitute products provided that the customer accepts such products.

- 9.2** The liquidated damages shall amount to 0.5 percent for each beginning week of delay of the price, excluding value added tax, of that part of the delivery whose acceptance is delayed from the agreed time schedule. However, the maximum amount of liquidated damages is 7.5 percent of the price of such part of the delivery excluding value added tax.
- 9.3** Section 13 of the IT2018 YSE general terms and conditions shall apply in other respects to liability for damages and limitation of liability.

10 RIGHTS TO THE DATA SYSTEM

- 10.1** Unless otherwise agreed in writing, the intellectual property rights to the data system and modifications thereto other than those mentioned in section 10.4 shall belong to the manufacturer.
- 10.2** The customer is granted a licence to use the data system as set out in the agreement. Unless otherwise agreed in writing, the customer and the companies belonging, according to the Accounting Act, to the same group of companies with the customer from time to time shall have the right to use the data system in their internal operations. Unless the manufacturer's prior written consent is obtained, the customer may not use the data system to offer service bureau or time-sharing services based on such software included in the data system to third parties.
- 10.3** Within the scope of the licence, the customer has a free right to make copies. Each copy must contain the same legends and notices on copyright, trademark etc. as appear in the original software copy and shall be subject to the same terms and conditions as the original software copy.
- 10.4** Unless otherwise agreed in writing, the customer shall have the right to make changes to the data system or to have such changes made by a third party (a) by using the open application programming interface possibly specified by the manufacturer; and (b) to the customised software or open source software potentially included in the data system. The customer shall not in other respects have the right to make changes to the software included in the data system or to have such changes made by a third party without the manufacturer's prior written consent.
- 10.5** The customer grants to the manufacturer a non-exclusive, paid-up and royalty-free licence to copy, change and make available to the public changes that the customer makes or is having made by a third party to the data system. The manufacturer's right referred to in this section 10.5 also includes the right to assign these rights to a third party.
- 10.6** The customer shall not have the right to assign the licence, save for the rights set out in this section 10. The customer shall, however, have the right to assign the operating of the data system at the customer's expense to a third party provided that the data system is used solely on behalf of the customer and the companies belonging, according to the Accounting Act, to the same group of companies with the customer from time to time. The customer shall ensure that the third party is bound by the confidentiality obligations contained in the agreement or by essentially corresponding confidentiality terms.
- 10.7** The agreement shall not affect the rights related to such materials that the parties furnish to each other in order to implement the data system.

11 WARRANTY

- 11.1** The supplier undertakes to correct at no cost and without undue delay all such errors in the data system as are reported in writing by the customer to the supplier during the warranty period. The correction of an error may also be done by providing a workaround or by providing the customer with written instructions on how to bypass the error, if this can be done without causing additional costs or substantial inconvenience to the customer. The warranty period is 6 months from acceptance of the delivery of the data system as set out in section 8.5.
- 11.2** The warranty shall be valid only if the data system is used in the agreed operating environment or in another operating environment specified by the supplier.
- 11.3** In principle, the supplier shall perform the warranty corrections from its office. If separately agreed upon, the diagnosis of errors shall be done at the customer's premises.
- 11.4** The warranty does not cover repair of an error caused by (a) use contrary to the agreement or the written instructions given by the supplier, (b) a non-supplier product, or (c) a change or correction made by the customer or a third party.
- 11.5** If it is established that correction of the error reported by the customer is not covered by the warranty, the supplier shall be entitled to charge for diagnosis and location of the error in accordance with the agreed pricing principles. The supplier shall also be entitled to charge the customer for such agreed corrections of errors as are not covered by the warranty.
- 11.6** The warranty covering the data system shall expire if the customer makes changes to the data system or has such changes made by a third party and such changes have not been approved by the supplier in writing.
- 11.7** The supplier's liability for errors in the data system shall be limited to fulfilment of the warranty obligations under this section 11. Following expiration of the warranty period the supplier's liability for errors in the data system shall be limited to the obligations under the maintenance and support agreement, if any.

12 RECRUITMENT RESTRICTION

- 12.1** Neither party may engage a person who is or has been in the service of the other party and performs or has performed essential tasks relating to the project, or enter into any other agreement or otherwise agree on such arrangement, whose purpose is to obtain the work contribution of the person in question, until 6 months have passed from acceptance as set out in section 8.6.
- 12.2** In case of a breach of the recruitment restriction contained in section 12.1, the breaching party shall be liable to pay to the other party by way of liquidated damages an amount corresponding to 6 months' gross salary of the person in question.
- 12.3** The recruitment restriction shall not, however, apply if the employment of the person in question has been terminated for a reason attributable to the employer or if the recruitment occurs on the initiative of the person in question in response to a public job advertisement.